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INFO RUEHZN/EUROPEAN POLITICAL COLLECTIVE

C O N F I D E N T I A L SECTION 01 OF 02 TIRANA 000177

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DEPT OF JUSTICE FOR OPPDAT, ICITAP

E.O. 12958: DECL: 03/07/2028

TAGS: [PGOV](#) [AL](#)

SUBJECT: CONSTITUTIONAL COURT TO DECLARE DISMISSAL OF  
FORMER PROSECUTOR GENERAL SOLLAKU A VIOLATION OF  
CONSTITUTIONAL PRINCIPLES

REF: A. 07 TIRANA 1003

[1](#)B. 07 TIRANA 974

[1](#)C. 07 TIRANA 949

Classified By: DCM Stephen A. Cristina, Reasons 1.4 (B) and (D).

[11.](#) (C) SUMMARY: In a decision that is yet to be announced, the Albanian Constitutional Court has ruled in favor of former Prosecutor General (PG) Theodor Sollaku, finding the Parliamentary Commission that headed the dismissal procedure against Sollaku violated the constitutional principle of separation of power in the Republic of Albania. In a 6-3 decision, the Court concluded that the scope of the work of the Commission went beyond Parliament's competence and clashed with the powers of the Prosecutor's office. A member of the Constitutional Court confirmed the verdict to us, saying the decision will be released when it has been carefully drafted, probably a least a month from now. Constitutional Court decisions are not retroactive, so this decision does not directly affect the appointment of Ina Rama to replace Sollaku. It confirms, however, that the Parliament violated the Constitution in the process that led to Sollaku's removal. The same Court member told us that the Court would seek to rule on Sollaku's pending second appeal in a way that would not jeopardize Rama's tenure or "disrupt institutional stability," with that decision expected within the next month. END SUMMARY.

[12.](#) (C) According to Constitutional Court (CC) member Sokol Berberi, the Court upheld former PG Sollaku's appeal seeking resolution of the competencies of Parliament and of the Prosecutor's Office, ruling against the Parliamentary Investigative Commission that recommended Sollaku's dismissal in November 2007 (Ref B). The CC established that Parliament violated powers that are the exclusive right of the Prosecutor's Office. According to Berberi, the Court upheld the arguments presented by Sollaku and declared that Parliament does not have the right to examine decisions reached by the PG in the exercise of his constitutional duties. Furthermore, the CC ruled that Parliament does not have the right to review a Prosecutor's decision not to initiate a criminal proceeding, to terminate a criminal proceeding, or to review the alleged failure of a PG to investigate cases reported by GOA agencies. All of these complaints were raised against Sollaku by the government and governing coalition parliamentarians in the months-long effort led by PM Berisha to remove Sollaku, whom he accused of being lax in prosecuting corruption (Ref C). The CC additionally found the Parliamentary Commission in breach of the Constitutional principle of separation of powers in the Republic of Albania.

[13.](#) (C) Berberi explained the decision had not yet been written. It may take more than a month for it to be released

publicly. The Court, he said, wants to take the necessary time to produce a comprehensive decision that would establish clearly the principle of an independent prosecutorial service and help to prevent a repetition of the actions leading to Sollaku's dismissal. Berberi confirmed that the decision does not affect actions following Sollaku's dismissal, but the Court wants to establish clear guidelines to prevent any future government from attempting such actions. (Note: Sollaku's predecessor was dismissed under similar circumstances under the previous Socialist Party government, leading to Sollaku's appointment -- with then opposition member Sali Berisha's concurrence.)

¶4. (C) Referring to a second case filed by Sollaku, after his dismissal as PG, Berberi said the Court would seek to reach a balanced decision that "would not upset the current institutional tenure," clearly referring to the appointment of current PG Ina Rama (Ref A). Other court sources suggested that decision would come within the next month.

¶5. (SBU) The decision, general outlines of which have been published in the media, establishes important guidelines for the relationship between Parliament and the Prosecutor's Office. Because CC decisions do not have retroactive power, it will not affect Sollaku's fate or the operation of Ina Rama as the new PG. It clearly establishes, however, that the process leading to Sollaku's dismissal was flawed and did not respect Albania's Constitution.

¶6. (C) COMMENT: Assuming the CC decision, when released, is as described to us, it sets a powerful precedent in defense of the independence of the Prosecutor's Office in Albania. By extension, this defense should apply to other independent institutions, if not as a technical matter of law, then as a matter of principle. The Court is engaged in

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a carefully choreographed dance, trying to establish clear boundaries between institutions while not disrupting institutional stability.

¶7. (U) CASE TIMELINE:

May 2, 2006: Parliament establishes first Parliamentary Investigative Commission on PG Sollaku.

October 2006: Then President Moisiu rejects Parliament's proposal to dismiss Sollaku, stating the proposal was unconstitutional.

December 4, 2006: CC finds the first Investigative Commission violates the principle of separation of powers.

October 25, 2007: (Following the end of Moisiu's term in office and the appointment of President Topi.) Parliament establishes the second Investigative Commission on Sollaku.

November 1, 2007: PG Sollaku appeals Parliament's October 25 decision to the CC. (This is the case determined by the Court.)

November 22, 2007: President Topi dismisses Sollaku and appoints Ina Rama as the new PG.

November 26, 2007: Citizen Sollaku appeals his dismissal by Topi to the CC. (Decision on this case expected.)

WITHERS